



AOR 2006-35

October 27, 2006

Via Overnight Delivery

Federal Election Commission  
Office of General Counsel  
999 E. Street, N.W.  
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Commissioners:

I am the Treasurer of Kolbe for Congress ("Committee"), the principal campaign committee for Congressman Jim Kolbe of Arizona. I respectfully request an advisory opinion from the Federal Election Commission (the "FEC" or "Commission") pursuant to 2 U.S.C. 437f of the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended. The Committee seeks the Commission's opinion on whether the Committee may use campaign funds to pay legal fees and expenses incurred by Congressman Kolbe associated with a preliminary inquiry by the Department of Justice and an inquiry by the House Committee on Standards of Official Conduct (the "House Ethics Committee") into certain activities that have occurred during his tenure as a Member of the House of Representatives. In addition, the Committee seeks the Commission's opinion on whether the Committee may use campaign funds to pay for the legal fees and expenses incurred in responding to the press regarding these inquiries, or other proceedings, if any, that relate to the same operative facts.

**FACTUAL BACKGROUND**

Congressman Kolbe is the United States Representative from the Eighth District of Arizona. He was elected in 1984 and has served in Congress for twenty-two years. Currently, Congressman Kolbe sits on the House Appropriations Committee. In 1996, one of his subcommittee assignments was to the House Appropriations Subcommittee on the Interior. From 1996 to 2001, he was a member of the House of Representatives Page Board. Congressman Kolbe is not currently a candidate for Federal office and announced last year that he would retire from the House of Representatives in January 2007.

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According to press reports, the Department of Justice has opened a preliminary inquiry in connection with current and former Members of Congress and their interactions with current and former House Pages. While the details of the preliminary inquiry are unknown, it is clear that the aspects of the inquiry that involve Congressman Kolbe would not exist irrespective of Congressman Kolbe's duties as a federal officeholder. *See* media reports attached hereto as Exhibit A. Moreover, the press has reported that the Page Board has referred an allegation involving Congressman Kolbe to the House Ethics Committee. *See id.* If accurate, it is clear that the House Ethics Committee review of this allegation would not exist irrespective of Congressman Kolbe's duties as a holder of Federal office.

With respect to the inquiries in connection with Members of Congress and their interactions with current and former House Pages, the press has reported that Congressman Kolbe's office was contacted by a former Page because the former Page received unwanted contact from Congressman Mark Foley. Congressman Kolbe's office forwarded the Page's concerns to the appropriate authorities. Both the Justice Department and the House Ethics Committee allegedly are reviewing the facts and circumstances surrounding these communications. The facts and circumstances of these events would not exist irrespective of Congressman Kolbe's status as a Federal officeholder.

With respect to allegations published in the press concerning a rafting trip in 1996, involving nine adults and two former Pages, the trip was an official Congressional trip to the Grand Canyon in which Congressman Kolbe participated in his capacity as a Member of the House Appropriations Subcommittee on the Interior. The official trip was led by two members of the National Park Service. In addition to the two former Pages, five adult members of Congressman Kolbe's district Congressional office staff, and his sister participated on the entire trip. Absent Congressman Kolbe's position as a Federal officeholder, this official trip and the participants' involvement in it would not have occurred.

Accordingly, the Committee seeks guidance regarding whether it is permissible for the Committee to pay legal fees and expenses incurred in connection with the Department of Justice's preliminary inquiry, the House Ethics Committee's inquiry, and other proceedings, if any, that relate to the same operative facts, and in responding to the press.

#### **LEGAL DISCUSSION**

A federal officeholder may use campaign funds to pay legal expenses as long as those legal expenses do not constitute a personal use. 2 U.S.C. 439a; 11 § C.F.R. 113.1(g)(1)(ii)(A) (defining personal use as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist 'irrespective' of the candidate's campaign or duties as Federal officeholder."); *see also* Advisory Opinion 2003-17. Under the personal use rules, expenses for attorney services are among those uses that will be examined on a case-by-case basis. 11 C.F.R. § 113.1(g)(1)(ii)(A).

It is well established that legal expenses in defense of government investigations relating to the activities of a federal officeholder may be paid for with campaign funds. *See*

Advisory Opinions 2003-17; 1998-1; 1997-12; 1996-24; 1995-23; 2000-40. The Commission has routinely approved the use of campaign funds for legal expenses in connection with investigations prior to any regulatory enforcement action. In such cases, the Commission has relied on the description of the investigation provided by the requesting party as well as press reports regarding the investigation to determine whether the subject matter of the investigation pertained to the official conduct of a Member of Congress. See Advisory Opinions 1998-1; 1997-12.

As the Commission has recognized, the activities of Federal officeholders may receive heightened scrutiny and attention in the news media because of their official status. See Advisory Opinions 1998-1; 1997-12; 1996-24. The Commission has stated that the "obvious need for a candidate to respond to allegations that result from this elevated scrutiny would not exist irrespective of the candidate's campaign or officeholder status." See Advisory Opinions 1998-1; 1996-24. Therefore, "(1) any legal expense that relates directly and exclusively to dealing with the press, such as preparing a press release, appearing at a press conference, or meeting or talking with reporters, would qualify for 100% payment with campaign funds because [the person is] a candidate or Federal officeholder; (2) any legal expense that relates directly to allegations arising from campaign or officeholder activity would qualify for 100% payment with campaign funds; and (3) 50% of any legal expense not covered by 1 above that does not directly relate to allegations arising from campaign or officeholder activity can be paid for with campaign funds because [the person is] a candidate or Federal officeholder and [is] providing substantive responses to the press." See Advisory Opinions 1998-1; 1997-12.

Pursuant to federal regulations, the Committee will maintain appropriate documentation of any disbursements made to pay legal fees and expenses in connection with the preliminary inquiry and other proceedings, if any, that relate to the same operative facts. Likewise, the Committee will disclose such expenditures as required under the pertinent regulations.

Please feel free to contact me, or counsel, with any questions regarding this request. As these matters are being addressed currently, I would appreciate an expedited response to this request for an advisory opinion.

Sincerely,



William H. Kelley  
Treasurer  
Kolbe for Congress  
P.O. Box 31568  
Tucson, Arizona 85751

washingtonpost.com

## Lawmaker Saw Foley Messages In 2000

Page Notified GOP Rep. Kolbe

By Jonathan Weisman  
Washington Post Staff Writer  
Monday, October 9, 2006; A01

A Republican congressman knew of disgraced former representative Mark Foley's inappropriate Internet exchanges as far back as 2000 and personally confronted Foley about his communications.

A spokeswoman for Rep. Jim Kolbe (R-Ariz.) confirmed yesterday that a former page showed the congressman Internet messages that had made the youth feel uncomfortable with the direction Foley (R-Fla.) was taking their e-mail relationship. Last week, when the Foley matter erupted, a Kolbe staff member suggested to the former page that he take the matter to the clerk of the House, Karen Haas, said Kolbe's press secretary, Korenna Cline.

The revelation pushes back by at least five years the date when a member of Congress has acknowledged learning of Foley's behavior with former pages. A timeline issued by House Speaker J. Dennis Hastert (R-Ill.) suggested that the first lawmakers to know, Rep. John M. Shimkus (R-Ill.), the chairman of the House Page Board, and Rep. Rodney Alexander (R-La.), became aware of "over-friendly" e-mails only last fall. It also expands the universe of players in the drama beyond members, either in leadership or on the page board.

A source with direct knowledge of Kolbe's involvement said the messages shared with Kolbe were sexually explicit, and he read the contents to The Washington Post under the condition that they not be reprinted. But Cline denied the source's characterization, saying only that the messages had made the former page feel uncomfortable. Nevertheless, she said, "corrective action" was taken. Cline said she has not yet determined whether that action went beyond Kolbe's confrontation with Foley.

In interviews with The Post last week, multiple pages identified Kolbe as a close friend and personal confidante who was one of the only members of Congress to take any interest in them. A former page himself, Kolbe offered to mentor pages and kept in touch with some of them after they left the program, according to the interviews.

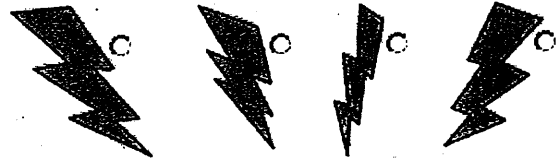
Kolbe once invited four former pages to make use of his Washington home while he was out of town, according to an instant message between Foley and another former page, Jordan Edmund, in January 2002. The pages planned to attend a first-year reunion of their page class. But because of a snowstorm, they did not take Kolbe up on his offer, according to one of the four pages.

Cline said one of the youths invited was a former page of Kolbe's. Because the congressman frequently travels on weekends, either to his Arizona ranch or abroad, the house is often available to friends, constituents, staffers and former staff members, such as a former page, she said.

Kolbe, the only openly gay Republican in Congress, is retiring at the end of the year.

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The latest revelation in the growing House page scandal comes just a month before crucial midterm elections. Foley resigned Sept. 29 after ABC News confronted him with the sexually explicit messages that he exchanged with a former page, triggering investigations by the Justice Department, the House ethics committee and Florida authorities.

Hastert and his top aides have been sharply criticized by Democrats and some conservative Republicans for failing to act promptly after receiving warnings that Foley had been sexually predatory in dealing with pages and former pages. Ron Bonjean, the speaker's spokesman, said yesterday: "Allegations of inappropriate conduct by members of Congress towards pages need to be fully reviewed by the ethics committee and law enforcement."

In addressing the revelation about Kolbe, Bonjean said, "This allegation reiterates why the speaker has also called for a full review of the House page program to ensure that it is as safe and secure as possible."

A new poll by Newsweek indicates the Foley scandal is doing significant damage to the Republicans' political fortunes and could sink their chances of holding onto control of Congress on Election Day, Nov. 7. The poll found that 52 percent of Americans, including 29 percent of Republicans, believe Hastert was aware of Foley's Internet communications with underage pages and tried to cover up Foley's actions. More of those polled, 42 percent, now say they trust Democrats to do a better job handling moral values than Republicans; 36 percent favored Republicans on the values question.

In a sharp exchange on "Fox News Sunday," Rep. Jack Kingston (R-Ga.), the vice chairman of the House Republican Conference, insinuated that Democrats were behind the revelations of Foley's actions and the release of electronic messages showing Foley having sexually graphic or highly suggestive conversations with former pages.

"What I don't understand is where have these e-mails been for three years? Are we saying that a 15-year-old child would have sat on e-mails that were triple-X-rated for three years and suddenly spring them out right on the eve of an election? That's just a little bit too suspicious, even for Washington, D.C.," Kingston said.

Rep. Martin T. Meehan (D-Mass.) shot back, "If there's any evidence that you need that the values in Washington have turned upside down, you could just hear what Jack had to say. Only in Washington, D.C., can you take a group of people in charge of the House and basically have evidence that they've been looking the other way while a predator has been . . . going after 15- and 16-year-old pages, [and] they somehow . . . have the audacity to turn that into a political attack against Democrats."

So far, only ABC News and The Washington Post are known to have obtained the sexually explicit instant messages between two former pages and Foley. The Post obtained its copies from a former page who served on Capitol Hill with the other two pages.

*Staff writer James V. Grimaldi contributed to this report.*

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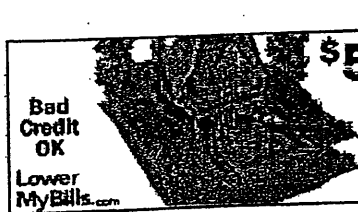
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## Rep. Kolbe visited Grand Canyon with pages Park Service workers, office staffers accompanied group during 1!

By Jim Popkin and Aram Roston  
 NBC News  
 Updated: 5:22 a.m. ET Oct 11, 2006

WASHINGTON - Rep. Jim Kolbe (R-Ariz.) took two male pages with him on a three-day camping trip in 1996, former congressional pages and National Park Service officials have told NBC News.

The pages, who were 17 at the time, went rafting and camping with Kolbe in the Grand Canyon over the July 4th holiday that year.

A spokeswoman for Kolbe confirmed the overnight trip but said that the pages did not travel alone with Kolbe.

The congressman's sister, along with office staffers and several Park Service employees, traveled with Kolbe and the pages, Kolbe spokeswoman Korenna Cline said.

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Gary Cummins, the deputy superintendent of Grand Canyon in 1996, told NBC News that he was also on the trip with Kolbe. Cummins confirmed that two young men were on the trip with Kolbe and were part of a larger group.

Kolbe's spokeswoman said the pages paid their own way on the trip. She added that Kolbe sat on the House Interior Committee at the time, and was visiting the Grand Canyon to study Park Service operations and to perform "fire reconnaissance."

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**Openly gay congressman**

Kolbe is the only openly gay Republican congressman. He has been active with the congressional page program for years, and was himself a page in 1958 for Sen. Barry Goldwater.

This week, Kolbe got dragged into the controversy surrounding disgraced Rep. Mark Foley (R-Fla.). In a statement on Tuesday, Kolbe acknowledged that he had known for years about e-mails from Foley that had made one former page "uncomfortable."

He said he had no idea the e-mails from Foley to the page were "sexually explicit" and defended his decision to only pass along the page's complaint to Foley's office and to the clerk who oversaw the page program. Kolbe did not inform the House leadership.



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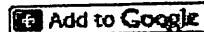
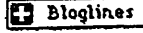
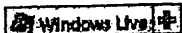
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October 11, 2006

## Earlier Warning About Foley Emails Is Confirmed

**Rep. Kolbe Says He Alerted  
Floridian's Chief of Staff,  
Who Will Testify Thursday**

By **DAVID ROGERS**  
October 11, 2006; Page A6

WASHINGTON -- A Republican congressman and past member of the House Page Board confirmed an earlier incident in which a former House page complained of inappropriate email from Rep. Mark Foley.

Rep. Jim Kolbe of Arizona said his office informed Kirk Fordham, chief of staff to Mr. Foley -- a former Republican congressman from Florida -- and Jeff Trandahl, then the House Clerk, of the complaint.



**Jim Kolbe**

"We contacted Kirk Fordham in Foley's office and told him he should advise Mr. Foley to stop communicating with the individual," Mr. Kolbe said Tuesday. "My staff says the Clerk was advised."

The complaint appears to have been made between 2000 and 2002, or more than two years before a separate incident last fall, when a Louisiana family complained to their congressman of Foley emails to their teenage son, also a former page.

In both cases, Mr. Foley was warned directly or through his staff to cease contact with the former pages, and he apparently did. But following Mr. Foley's resignation on Sept. 29 -- and disclosure of his sexually explicit messages to former pages -- House Republicans are under fire for not having done more to

investigate these early warnings of his behavior.

Mr. Fordham, who is to testify Thursday before the House Ethics Committee in its probe of the matter, has accused the House Republican leadership of ignoring his pre-2005 warnings about Mr. Foley's inappropriate contacts with House pages. A veteran political operative who left Mr. Foley's employ in late 2003, Mr. Fordham said last week that he went to the leadership because of his own concerns, as well as warnings by Mr. Trandahl about Mr. Foley's conduct.

Mr. Trandahl, who is described by friends as having been very protective of the pages under his supervision, has declined to

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comment. The new developments highlight the importance of his future testimony, because he was responsible for the page program and reported to Speaker Dennis Hastert's office. If Mr. Trandahl was informed, the Ethics Committee will want to know if he shared that information with the speaker's office. When the complaint came last year from the Louisiana family, it would have been a second red flag about Mr. Foley's behavior for Mr. Trandahl and anyone he advised in Mr. Hastert's office.



<sup>1</sup>  
At a speech about the economy, House Speaker Dennis Hastert (R-Ill.) says<sup>2</sup> anyone linked to a cover up in the Foley scandal will be fired, but insists that no one in his office did anything wrong.

At home in Illinois, Mr. Hastert again defended how his staff handled the 2005 complaint, but said that "in 20/20 hindsight, probably you could do everything a little bit better." He added, "If they did cover something up, then they should not continue to have their jobs."

Mr. Fordham's attorney, Timothy Heaphy, declined to comment about whether his client had been a contact in dealing with the page complaint raised by Mr. Kolbe. Mr. Trandahl's attorney, Cono Namorato, also declined to comment when told of Mr. Kolbe's account.

Mr. Kolbe, a former page, is retiring this year after 11 terms in Congress, during which he served a stint on the Page Board until February 2001.

Traveling in Europe, Mr. Kolbe responded Tuesday, in written answers sent by email to the Journal and then later in a statement from his office.

"I never saw any of the messages," he said, "And was never told they were sexually explicit, only that they made the former page uncomfortable."

He said his best recollection is the complaint came to him "much later than 2000," that he didn't speak directly to Mr. Foley, and instead his office contacted Mr. Fordham and Mr. Trandahl's office.

Mr. Kolbe said that if the former page, whom he appointed to the House program, says the complaint was made in 2000, he wouldn't dispute this. But he believed the date was later and after he had left the Page Board.

"Whenever this happened, it was after his tenure as page," Mr. Kolbe said. "He was no longer a page, not subject to the jurisdiction of the Page Board. I thought then and think now we handled this exactly correctly, given the amount of information we were given."

Nonetheless, the Foley matter has forced the House to rethink its responsibility for teenagers after leaving the page program, in which they work for one or two semesters on Capitol Hill. Mr. Foley showed a pattern of engaging in flirtatious, friendly behavior with pages while in Washington, and then pursuing them on the Internet after their stints as pages.

Write to David Rogers at david.rogers@wsj.com<sup>6</sup>

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## Sources: Inquiry opened over Kolbe, male ex-pages

WASHINGTON (CNN) – The U.S. attorney in Arizona has begun a preliminary inquiry into a 1996 camping trip that included Rep. Jim Kolbe, R-Arizona, and two male former congressional pages, according to two federal law enforcement officials who are familiar with the issue.

The officials said the initial assessment stems from a single allegation regarding Kolbe's behavior on the trip.

"This inquiry has just recently begun, and it is much too early to know whether there is anything there," said one official with knowledge of the matter.

Spokesmen for the Justice Department refused any comment.

Kolbe's spokeswoman, Korenna Cline, said she was not aware of the U.S. attorney's investigation.

On Tuesday, Kolbe denied a Washington Post report that he confronted former congressman Mark Foley about Foley's exchanges with teenage congressional pages. Kolbe said he knew of Foley e-mails that made a page "uncomfortable" and passed them on to Foley's office and the House clerk. ([Watch how "corrective action was taken" in the matter — 1:52](#))

Kolbe, an openly gay Republican, has served 22 years in the House and is retiring after this term. From 1996 to 2001, he served on the board that supervises the page program. Kolbe was himself a page for Sen. Barry Goldwater in the 1950s.

The report of an inquiry comes amid a growing House scandal that began September 29 when Foley, a Florida Republican, resigned after sexually explicit instant messages from the six-term lawmaker to male congressional pages were leaked to the news media.

The furor about when Republican leaders in the House learned about Foley's conduct and what they then did has prompted calls for House Speaker Dennis Hastert to resign as he and other Republicans attempt to maintain control of Congress in midterm elections, just weeks away.

According to Kolbe's spokeswoman, he has not been invited to speak to the House ethics committee, which is investigating the allegations of improper behavior toward pages by Foley and how those allegations were handled by House leaders.

### Grand Canyon trip

In the summer of 1996, Kolbe met with members of the National Park Service in the Grand Canyon, according to Cline. Kolbe toured operations and fire reconnaissance facilities.

At the time, Kolbe was a member of the Interior subcommittee, and this was an official trip, Cline said.

Toward the end of the trip, Kolbe was joined by five staffers from his Arizona district offices, as well as his sister and two former pages. The aide stressed that each member of the trip paid his or her own way, including Kolbe and the two former pages, and this was not part of the official business.

One person who was on the 1996 trip told CNN he felt Kolbe was overly friendly with one of the former pages. He said there was "hugging." But the source said he saw no sexual activity and also noted that everyone slept nearby and in the open because of the extreme heat. He told CNN he would be talking with the FBI on Friday.

CNN agreed not to identify the person, because he was concerned about future government employment.

"There is absolutely no basis and no truth to the allegations," Cline said Friday. "The congressman is shocked and stunned by the allegations."

Another person on the trip who asked not to be identified said he saw nothing untoward but added that he was not on the trip the whole time.

CNN has been unable to reach the pages who were on the trip. NBC reported Friday that the two pages are now in their late 20s. According to NBC, one page said Kolbe never acted improperly and the other refused to comment, saying he might be considered for a government job.

CNN's Todd Schwarzschild, Terry Frieden, Andrea Koppel, Kevin Bohn and Deirdre Walsh contributed to this report

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October 17, 2006

## House Page Program Leaders Discuss Trip

By THE ASSOCIATED PRESS

Filed at 7:29 p.m. ET

WASHINGTON (AP) -- House page program overseers this week discussed a camping trip that Rep. Jim Kolbe, R-Ariz., took with two former pages and others in 1996, a congressional official said Tuesday. The trip is under review by the Justice Department.

The five-member House Page Board, three lawmakers and two House officials, took no action and did not have any information beyond recent news accounts of the trip, the official said.

The discussion indicates that the board is moving beyond the overly friendly e-mails and sexually explicit instant messages that ex-Rep. Mark Foley, R-Fla., sent to former male pages. The House ethics committee and the FBI are investigating Foley's approaches to the teenagers.

The congressional official is familiar with the Page Board discussion but was not authorized to be quoted by name about the meeting.

While the Page Board does not have investigators, they could ask Kolbe to meet with them.

When the Foley scandal became public in late September, House Speaker Dennis Hastert asked the chairman of the Page Board, GOP Rep. John Shimkus of Illinois, to investigate the page system.

"We want to make sure that all our pages are safe and the page system is safe," Hastert said.

Pages are high school students who perform errands for lawmakers, learn about Congress and attend classes at a congressional school.

Meanwhile, the ethics committee continued to call witnesses for closed-door testimony. On Tuesday, House Sergeant-at-Arms Wilson Livingood, a member of the Page Board, was questioned for less than two hours. He would not comment afterward.

The committee still has not heard from the former clerk of the House, Jeff Trandahl, who as a board member confronted Foley in the fall of 2005, along with Shimkus.

Their visit came after the House speaker's office learned that Foley sent e-mails to a 16-year-old former male page from Louisiana. While the e-mails were far milder than the sexually explicit instant messages Foley sent to other former male pages, they raised questions. Foley asked what the youngster wanted for his birthday and requested a photograph.

Shimkus has said previously that Foley told him and Trandahl that he was acting as a mentor and that nothing inappropriate had occurred.

Foley was ordered by Shimkus to cease all contact with the former page and assured Shimkus he would do so, the board chairman said. He also was advised to watch his conduct with current and former House pages and he gave assurance he would do so, Shimkus said.

The ethics committee also heard Tuesday from Paula Nowakowski, chief of staff to House Majority Leader John Boehner, R-Ohio. Boehner has said he spoke to Hastert about Foley earlier this year, but the speaker said he does not recall the conversation.

Boehner has said Hastert told him the Louisiana page's complaint "had been taken care of." The majority leader is scheduled to testify this week.

The Kolbe trip was discussed at a conference call of the Page Board on Monday.

The meeting was first revealed several hours later by the lone Democrat on the Page Board, Rep. Dale Kildee of Michigan, who declined to say what was discussed. Kildee has been upset that Shimkus never told him about the problems with Foley.

Kolbe took the former pages as well as staff members and National Park Service officials on a Fourth of July rafting trip in the Grand Canyon in 1996, his former spokeswoman, Korenna Cline, said last week.

A federal law enforcement official said last week an allegation related to the trip was given to the U.S. attorney's office in Phoenix. It was not immediately clear whether it concerned any contention of improper activity by the retiring Kolbe -- the only openly gay Republican in Congress.

The official described the inquiry as preliminary and as far narrower in scope than the federal investigation concerning Foley, who resigned Sept. 29 after he was confronted with sexually explicit instant messages sent to former pages.

A second law enforcement official said the 1996 Kolbe trip may be too old to investigate as a criminal matter. Both officials spoke on condition of anonymity because of the ongoing investigation. A Justice Department spokeswoman declined to comment.

Cline said last week the rafting party included five current staffers, two former pages and Kolbe's sister. Nothing inappropriate happened on the trip, she said. She did not know who the pages were or what year they worked for Kolbe, but she said they paid their own way.

Beth Kolbe, the congressman's younger sister, who was on the three-night trip, said that nothing inappropriate happened and that she had not heard of any concerns from anyone until the story of the camping trip appeared in the news media.

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washingtonpost.com

## Kolbe Matter Is Referred to House Ethics Panel

Allegations Involve Contact With Male Former Pages

By Jonathan Weisman and James V. Grimaldi  
Washington Post Staff Writers  
Wednesday, October 18, 2006; A09

The House committee looking into allegations that former congressman Mark Foley (R-Fla.) had improper contact with male former pages has been asked by lawmakers overseeing the page program to look into allegations involving a second lawmaker, House sources said yesterday.

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Members of the Page Board sought the review after news reports last week that the Justice Department had opened a preliminary inquiry into a camping trip that Rep. Jim Kolbe (R-Ariz.) took with male former pages in 1996. That report sparked a conference call Monday among board members.

But because the Page Board, which consists of three House members and two senior House officials, does not have the authority to investigate members of Congress, the matter was turned over to the House ethics committee, formally known as the Committee on Standards of Official Conduct.

"It was about other allegations and I'd like to leave it at that," Rep. Dale E. Kildee (D-Mich.), a member of the Page Board, told reporters Monday as he exited a closed-door meeting of the ethics panel. "Let me just say" that the allegations are "not about Mr. Foley," he said. "It's only been allegations."

It was not clear what allegations the board was concerned about. But The Washington Post has learned of a potentially inappropriate incident involving Kolbe and a male page. The man recently told the House clerk's office and the FBI about an encounter with the Arizona Republican that occurred about five years ago when he was 16, according to someone familiar with the man's account. The page told authorities that he was "uncomfortable with a particular social encounter" that involved physical contact when he and Kolbe were alone, the source said yesterday.

The incident was not reported at the time, said the source, who emphasized that the encounter was based on the perception of a teenager five years ago.

A number of concerns about alleged improprieties in page matters have been referred to the committee since Foley abruptly resigned from the House on Sept. 29 after ABC News asked him about salacious instant messages he had sent to a former page, House leadership aides said. But such concerns so far have involved allegations that Foley's actions had been covered up or improperly handled, not that other House members have possibly engaged in inappropriate behavior.

"I haven't been contacted by anyone on this matter but if I am, I will fully cooperate with the appropriate authorities," Kolbe said in a statement last night.

Kolbe, the only openly gay Republican in Congress, will retire this year. He was a Senate page for three years.

Kolbe has said that he was aware in 2000 or 2001 of inappropriate e-mails that Foley had sent to one of his pages. Kolbe has said that he did not see the messages and was not told that they were sexually explicit. But a source with direct knowledge of the matter has disputed Kolbe's assertions.

Numerous pages have said that Kolbe kept in close contact with them during their time on Capitol Hill, and in some cases, after their service. Most of those pages said they viewed the congressman as a friend of the page program, and some considered him a mentor.

And Kolbe was known to be friendly with pages, sometimes joking with them in the cloakroom and corridors of the Capitol.

"Both Congressman Kolbe and Foley were known as friends of pages and really mentored the pages," said Billy Peard, a former page. Matt Schmitz, another former page, said he cautioned his younger brother, who also was a page, not to get too close to members of Congress.

Several pages said that Kolbe regularly offered up a dinner at his home for bids at the annual page auction, which raised money for charity and for the page prom. In 2002, a group paid \$210 for the Kolbe dinner. Kolbe picked up the group at the page dorm and drove to his house on East Capitol Street.

After dinner, the guests talked about the history and beauty of the house and Kolbe made them an offer, according to one page in the 2002-2003 class who spoke on the condition of anonymity. Kolbe said the pages were "free to stay here" if any of them were ever back in town after the program ended, the former page said.

The former page said he did not consider the comment to be "a red flag. It was a personal decision not to go back" to Kolbe's house "without a friend or two."

The invitation emerged in an instant-message exchange between one former page and Foley, in which Foley seemed to be jealous of Kolbe. In January 2003, that former page, Jordan Edmund, told Foley that he and three other former pages had been invited to sleep at Kolbe's house during a one-year reunion of their page class.

The event that captured the Page Board's attention was a camping trip that Kolbe took with two former pages and others in 1996, an outing first reported by NBC News and now under review by the Justice Department. One law enforcement official cautioned that the inquiry is based on allegations from an unidentified source that have not been substantiated. The allegations involve Kolbe's behavior toward one of the former pages, the official said.

The three-day trip down the Grand Canyon also included several Kolbe staff members; Kolbe's sister, Beth; and National Park Service employees, Kolbe spokeswoman Korenna Cline said last week. She denied any improprieties had occurred.

The ethics committee has moved expeditiously through its Foley investigation, taking testimony from Kirk Fordham, Foley's former chief of staff, who told the panel last week that he brought Foley's behavior to the attention of House Speaker J. Dennis Hastert's chief of staff in 2003. House Majority Leader John A. Boehner (R-Ohio) is expected to testify this week about his contention that he alerted Hastert this spring about Foley's conduct.

Tomorrow, former House clerk Jeff Trandahl -- perhaps the most important witness -- will appear before the committee. Trandahl should know about suspect e-mails that were referred to him as far back as

2000, about repeated efforts that Fordham said Trandahl had made to raise alarm about Foley's behavior, and about his own confrontation with Foley last November, just before Trandahl's abrupt departure from the House, sources said.

Meanwhile, Foley's attorney said in Miami that the former congressman will identify the Roman Catholic priest who he says sexually abused him as a young boy as part of Foley's "healing process."

Gerald Richman said Foley will identify the man to the Archdiocese of Miami so the church "can then deal appropriately with the issue," according to Reuters.

Soon after Foley's resignation, his attorneys confirmed that Foley is gay and said that he had been sexually abused by a priest while he was growing up in Florida.

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October 24, 2006

## U.S. Prosecutors Targeting GOP Lawmakers

By THE ASSOCIATED PRESS

Filed at 2:16 a.m. ET

WASHINGTON (AP) -- Public corruption cases brought by Justice Department prosecutors in Washington are on the rise, fueled in part by investigations targeting Republican lawmakers in Congress.

With the Nov. 7 elections looming, prosecutors have moved forward on investigations of three GOP lawmakers in the last month alone. And several Justice Department officials privately hint that even more inquiries -- involving Republicans and Democrats alike -- may be under way.

"We can't look at what party someone is a member of in deciding whether or not to pursue an investigation," Attorney General Alberto Gonzales told reporters last week, calling government corruption prosecution one of his top priorities. "We have to follow the evidence wherever it leads."

Gonzales said there is "no special emphasis" on those cases as the elections approach. But the Justice Department generally tries to keep a low profile on government corruption cases in the months before an election to avoid unfairly influencing voters.

Justice Department data show a 60 percent increase over the last five years in government corruption convictions and settlements by its Washington-based public integrity unit. Prosecutions resulted in 84 convictions and settlements in 2005, the data show, compared to 52 in 2001.

The aggressive pursuit of Republican lawmakers by Bush administration prosecutors is a sign of the independent streak of career attorneys inside the public integrity unit, said Paul F. Rothstein, a legal and government ethics professor at Georgetown Law School.

"A lot of them are nonpolitical -- they do have a taste for rooting out corruption and wrongdoing," Rothstein said. "There are some tensions coming from it. ... It's probably a very

delicate and agonizing situation for the political appointees at the top" of the Justice Department.

Investigations by the public integrity unit at Justice headquarters in Washington make up only a sliver of public corruption cases prosecuted nationwide, most of which are handled by U.S. attorneys' offices. Last year, for example, federal prosecutors around the country charged 445 government officials, resulting in 390 convictions.

With only 29 attorneys, the public integrity unit in Washington is small when compared to the 450 government lawyers who prosecute criminal cases in the capital.

The unit's prosecutors generally lead or assist in high-profile corruption or national security cases, including inquiries involving members of Congress or the administration. According to its annual report, the unit had five open investigations -- all of them unidentified -- involving Congress at the end of last year.

The unit has seen an increase "in certain kinds of corruption that gets in newspapers," said one prosecutor who spoke on condition of anonymity because of the sensitive nature of the cases. "Any time you're investigating a member of Congress, it's going to get a lot of attention."

In the last month, the Justice Department has moved forward on inquiries involving two House Republicans: Reps. Mark Foley of Florida and Jim Kolbe of Arizona, both being investigated for possible improper or illegal sexual contact with teenage congressional pages. At the same time, prosecutors stepped up their investigation into whether Rep. Curt Weldon, a Pennsylvania Republican, steered \$1 million in contracts to his daughter's lobbying firm.

All three men have denied the charges. Foley resigned shortly after the allegations surfaced, while Kolbe is retiring from the House.

Additionally, three other House Republicans and one GOP senator, as well as two House Democrats have been linked to ongoing Justice Department investigations over the last year. Two other House Republicans -- Reps. Randy "Duke" Cunningham of California and Bob Ney of Ohio -- have pleaded guilty to corruption charges.

Experts say the spike in reported corruption cases is likely caused by one-party control of both the House and Senate. Investigations by the Republican-controlled House Ethics Committee, for example, ground to a near-standstill for more than a year because of partisan squabbles over staff and rules for its inquiries.

"It's far worse than what we've seen for decades on Capitol Hill," said Craig Holman of the watchdog group Public Citizen. "We've got sex, we've got bribery, we've got lobbyist corruption, earmarking, money laundering. ... The people who are in power become very comfortable with their positions, and they don't think that they can get in trouble for stepping over the line."

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On the Net:

Justice Department: <http://www.usdoj.gov/>

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November 6, 2006

Via Overnight Delivery

Federal Election Commission  
Office of General Counsel  
999 E. Street, N.W.  
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Commissioners:

Please accept this letter as a supplement to my letter of October 27, 2006, in which I requested an advisory opinion from the Federal Election Commission ("FEC" or "Commission") on behalf of Kolbe for Congress ("Committee").

As you recall, the Committee has requested an advisory opinion regarding whether the Committee may use campaign funds to pay legal fees and expenses incurred by Congressman Kolbe associated with a preliminary inquiry by the Department of Justice and an inquiry by the House Committee on Standards of Official Conduct ("House Ethics Committee") into certain activities that have occurred during his tenure as a Member of the House of Representatives. In addition, the Committee seeks the Commission's opinion on whether the Committee may use campaign funds to pay for the legal fees and expenses incurred in responding to the press regarding these inquiries, or other proceedings, if any, that relate to the same operative facts.

I understand that the Commission has requested supplemental information from the Committee. Per your request, I have attached two press statements issued by the House Ethics Committee describing the scope of its investigation. Further, I have attached a newspaper article describing the Department of Justice's preliminary inquiry. Finally, with respect to statements contained in the cnn.com article about the 1996 rafting trip, Congressman Kolbe and his traveling group took the trip under the auspices of his office in light of his oversight role as a member of the House Appropriations Interior Subcommittee, with support for the trip provided by the National Park Service and the Office of Public Affairs, Grand Canyon National Park.

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2006 NOV - 8 P 4: 57

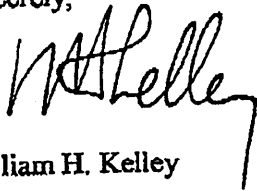
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contributions for federal income tax purposes.

Please feel free to contact me, or counsel, with any questions regarding this request. As these matters are being addressed currently, I would appreciate an expedited response to this request for an advisory opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Kelley". The signature is fluid and cursive, with a long horizontal stroke at the end.

William H. Kelley  
Treasurer  
Kolbe for Congress  
P.O. Box 31568  
Tucson, Arizona 85751



OCTOBER 5, 2006

STATEMENT OF CHAIRMAN DOC HASTINGS AND RANKING MINORITY MEMBER HOWARD L. BERMAN

**Bipartisan Ethics Committee  
Launches Investigation  
Of House Page Program Allegations**

The House Ethics Committee today launched a full-scale investigation regarding any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and current and former pages. The investigation will be led personally by the committee's chairman, Rep. Doc Hastings of Washington, and its ranking minority member, Rep. Howard L. Berman of California. The next most senior members of the Ethics Committee, Rep. Judy Biggert of Illinois and Rep. Stephanie Tubbs Jones of Ohio will also serve on the investigative subcommittee established today.

"The American people, and especially the parents of all current and former Pages, are entitled to know how this situation was handled and we are determined to answer their questions," said Hastings and Berman in a joint statement made following a meeting of the full Ethics Committee.

The Ethics Committee, officially titled the Committee on Standards of Official Conduct, met for several hours Thursday morning before voting to establish the investigative subcommittee. The investigative panel then held its first meeting and voted unanimously to approve a request by Hastings and Berman for nearly four dozen subpoenas to individuals and organizations both inside and outside of Congress.

The lawmakers said their inquiry will be conducted "as quickly as possible" and pledged that "we will go wherever the evidence takes us."

**Additional Background Information**

On Friday, September 29, 2006, Representative Mark Foley resigned from the House of Representatives. After his resignation, H. Res. 1065 was introduced as a privileged resolution on the floor of the House. H. Res. 1065 directed the Committee on Standards of Official Conduct to appoint a subcommittee to determine the facts connected with "Representative Foley's conduct and the response thereto" and directed the Chairman and Ranking Member of the Committee to make a preliminary report within ten days. The resolution was not adopted, but was referred to the Committee on Standards of Official Conduct by unanimous vote.

Because the privileged resolution was not adopted by the House, the Committee retains discretion to determine whether to take any action on this matter under Committee rules. In order to make that determination, Committee members returned to Washington from recess to deliberate on this matter in a meeting on Thursday, October 4, 2006.

The Committee has determined that this matter warrants immediate Committee review, and has therefore voted unanimously to establish an investigative subcommittee. This action was taken in accordance with clause 3 of House Rule XI and Committee Rules 1(c), 14(a)(3) and 18(a), which authorize the Committee to establish an investigative subcommittee on its own initiative.

The investigative subcommittee will have jurisdiction to conduct a formal inquiry regarding any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and current and former House Pages. At the conclusion of its inquiry, the investigative subcommittee is to report its findings, conclusions and recommendations to the full committee. Anyone having first-hand knowledge regarding this matter is requested to contact the committee offices.

In accordance with Committee Rule 19(a), the Chairman and Ranking Minority Member have designated themselves as members of the subcommittee, and have designated as additional members Representative Judy Biggert and Representative Stephanie Tubbs Jones. No additional public comment will be made on this matter other than in accordance with Committee rules.

**Statement by Chairman Doc Hastings and  
Ranking Minority Member Howard Berman**

**House Ethics Committee  
October 5, 2006**

Earlier today, the House Ethics Committee voted unanimously to establish an Investigative Subcommittee regarding any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and Current and Former Pages.

Given the seriousness of this matter, Congressman Howard Berman and I will serve as the chairman and ranking minority member of the subcommittee in order to personally direct this investigation. Representatives Judy Biggert and Stephanie Tubbs Jones will serve with us on the subcommittee and we will be assisted by a team of skilled professional investigators.

Like all Americans, we are both appalled at the revelations of highly improper communications between former Representative Mark Foley and a young man who came to know Mr. Foley while working here in the Capitol as a congressional page.

Appointment as a page in the House is an honor and privilege for any young man or woman, and provides an extraordinary education into the workings of the legislative branch of government. All of us who serve here as Members of Congress appreciate the important role that pages play in the work of the House.

We owe all House pages and their parents our best efforts to make the Page experience as educational, fulfilling – and safe – as possible. In recent days, the adequacy of those efforts has been called into question.

Simply put, the American people, and especially the parents of all current and former pages, are entitled to know how this situation was handled – and we are determined to answer their questions. Congressman Berman and I will do so as quickly as possible, and we pledge to you that our investigation will go wherever the evidence takes us.

Admittedly, this is a busy time for any Member of Congress, but Howard and I have agreed that we have no higher priority in the days ahead and are committed to act accordingly.

Indeed, shortly following the meeting of the full Ethics Committee, our new investigative subcommittee met for the first time and unanimously approved nearly four dozen subpoenas for documents and testimony. Many of the individuals we plan to talk with are Members, officers and staff of the House. For that reason, we sincerely hope most of the subpoenas we authorized today will prove unnecessary, because we believe that most of those individuals share our desire to get quick and truthful answers to the questions being asked by so many Americans.

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# Reports: Kolbe camping trip under investigation

The Business Journal of Phoenix - October 13, 2006 by [Mike Sunnucks](#) The Business Journal

Federal officials are looking into the actions of Arizona Congressman Jim Kolbe in regards to a 1996 camping trip to the Grand Canyon he took with teenage congressional pages.

NBC News, MSNBC and the Associated Press are among the media outlets reporting the federal inquiry into the Kolbe trip.

Kolbe spokeswoman Korenna Cline said the Arizona Republican's office has not been officially notified of a federal inquiry but has been asked about it by numerous media outlets.

Wyn Hornbuckle, spokesman for the U.S. Attorney's office in Phoenix, confirmed there was a "preliminary assessment" of the Kolbe camping trip with pages. He declined to go into further detail.

Officials at the U.S. Justice Department in Washington, D.C., could not be reached for comment on the nature of the inquiry.

Kolbe, a Tucson Republican, has become a major player in the unfolding Mark Foley congressional page scandal in Washington D.C. Foley resigned after it was learned he made inappropriate advances via e-mails and text messages towards male congressional pages.

A former page informed Kolbe in 2000 that some of Foley's e-mails were making that page feel uncomfortable. Kolbe said in a recent statement he did not know of the nature of Foley's advances and forwarded information on the incident to Foley's office and officials overseeing the page program.

Kolbe was a former congressional page himself, serving under late former U.S. Senator Barry Goldwater. He previously served on the congressional panel overseeing the page program. Pages are high school students who intern at the U.S. Capitol.

The Foley scandal has resulted in calls for the resignation of U.S. House Speaker Dennis Hastert and fueled Democratic election efforts linking the sexually charged scandal with other GOP ethics problems.

Kolbe, the only openly gay Republican serving in Congress, is not running for re-election. Democrats are optimistic former state Sen. Gabby Giffords can defeat conservative Republican Randy Graf, a former state legislator, in the contest to fill Kolbe's seat.

Kolbe is popular with business groups and chambers of commerce favoring free trade accords and

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an immigration guest worker program.

Cline also announced Friday she was leaving Kolbe's office to pursue another job opportunity.

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 17, 2006

Katherine McCarron, Esq.  
WilmerHale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

Dear Ms. McCarron:

This refers to letters you submitted on October 27, 2006 and November 8, 2006, on behalf of Kolbe for Congress (the "Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of campaign funds for legal expenses.

The letters include the following facts. The Committee is the principal campaign committee of Representative Jim Kolbe of Arizona. The Department of Justice is conducting a preliminary inquiry, and the House Committee on Standards of Official Conduct (the "House Ethics Committee") is conducting a formal inquiry into "certain activities that have occurred during Representative Kolbe's tenure as a Member of the House of Representatives." With respect to the Department of Justice inquiry, you submitted press reports that describe the inquiry. In addition, you submitted House Ethics Committee documents that explain its inquiry is "regarding any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and current and former House Pages." You state that aspects of the inquiries involving Representative Kolbe "would not exist irrespective of Congressman Kolbe's duties as a federal officeholder." Accordingly, you ask whether the Committee may use campaign funds to pay legal expenses incurred by Representative Kolbe in connection with these inquiries. You also ask whether the Committee may use campaign funds to pay for legal expenses incurred in responding to the press in connection with these inquiries.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that a request must "include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations further explain that the Office of General Counsel shall determine if a request

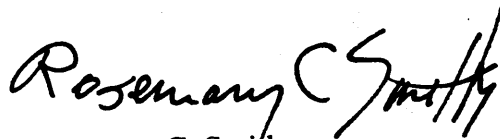
is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In view of the above requirements, and as we have previously discussed, we need further detail regarding the activities that are the subject of the inquiry:

- 1) Please either confirm that the Department of Justice's preliminary inquiry concerns a 1996 trip to the Grand Canyon involving Representative Kolbe and two former Pages (among others) or, in the alternative, describe the preliminary inquiry by the Department of Justice as it pertains to Representative Kolbe's duties as an officeholder.
- 2) Please confirm your verbal representation to us that certain statements in a *CNN* article submitted with the Committee's advisory opinion request are inaccurate. The *CNN* statements indicate that "each member of the trip paid his or her own way, including Kolbe and the two former pages, and this was not part of the official business."

Upon receiving your responses to the above questions, this Office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions about the advisory opinion process or this letter, please contact J. Duane Pugh, Acting Assistant General Counsel in this office at 202-694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemary C. Smith", with a stylized flourish at the end.

Rosemary C. Smith  
Associate General Counsel



November 27, 2006

J. Duane Pugh, Esq.  
Acting Assistant General Counsel  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

2006 NOV 27 PM 1:13

FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Dear Mr. Pugh:

This letter is a supplement to my letters of October 27, 2006 and November 8, 2006, on behalf of Kolbe for Congress, concerning the application of the Federal Election Act of 1971, as amended (the "Act"), and Commission regulation to the use of campaign funds for legal expenses.

Per your request for supplemental information:

- 1) The specific details of the Justice Department's preliminary inquiry are largely confidential. However, it concerns, among other things, the 1996 rafting trip to the Grand Canyon that has been mentioned in the media and information known to or obtained by Congressman Kolbe and his staff, in an official capacity, relating to the interaction between Congressman Mark Foley and current or former pages. Congressman Kolbe is cooperating with the preliminary inquiry and has not been identified as a "target" by the Department.
- 2) I understand that you also have questions about the accuracy of the following statement from a *CNN* article about a 1996 rafting trip taken by Congressman Kolbe and a larger delegation: "The aide stressed that each member of the trip paid his or her own way, including Kolbe and the two former pages, and this was not part of the official business." Based on the presently available information, including trip manifests, it is now clear that the quotation in the *CNN* article is incorrect. The aide misspoke when she made the original statement; she had no firsthand knowledge of the trip and at the time she could not reach Congressman Kolbe to clarify the nature of the trip. The 1996 rafting trip was part of an official Congressional visit sponsored by the National Park Service and the Office of Public Affairs, Grand Canyon National Park. Congressman Kolbe and others took the trip under the auspices of his office in light of his oversight role as a member of the House Appropriations Interior Subcommittee. Public funds were expended in

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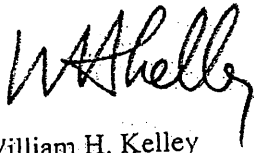
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connection with the trip, although it appears that some incidental expenses were paid for privately. This does not, I believe, transform the character of the trip from its official status.

Please feel free to contact me, or counsel, with any further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. H. Kelley", with a stylized, cursive script.

William H. Kelley  
Treasurer  
Kolbe for Congress  
P.O. Box 31568  
Tucson, Arizona 85751